

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TIMOTHY CARMACK	§	
v.	§	CIVIL ACTION NO. 6:05cv326
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Timothy Carmack, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Carmack was convicted of murder on November 16, 2001, receiving a sentence of life in prison. In his federal habeas petition, he complained that he was denied due process, that the prosecution committed misconduct which the trial court allowed, and that he was denied effective assistance of counsel. The Magistrate Judge ordered the Respondent to answer the petition and received copies of the state court records.

After review of the pleadings and records in the case, the Magistrate Judge issued a Report on August 11, 2006, recommending that the petition be denied. The Magistrate Judge carefully and thoroughly reviewed each of Carmack's claims and determined that he did not show that the state court's adjudication of his claims resulted in a decision which was contrary to or involved an unreasonable application of clearly established federal law, as determined by the Supreme Court, or resulted in a decision based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. §2254(d).

On August 21, 2006, Carmack filed a motion for extension of time in which to file objections to the Magistrate Judge's Report. This motion was granted and Carmack was given until September 7, 2006, in which to object. On August 24, Carmack requested a copy of his petition, which was sent to him the next day.

On September 7, 2006, Carmack filed a second motion for extension of time in which to object, which was granted to September 27, 2006. Carmack received a copy of this order on September 19, 2006, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED with prejudice. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 31st day of October, 2006.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**